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Final Regulation Agency Background Document

Agency name	Board for Waste Management Facility Operators
Virginia Administrative Code (VAC) citation(s)	18 VAC 155-20
Regulation title(s)	Board for Waste Management Facility Operators Regulations
Action title	General Review of the Board for Waste Management Facility Operators Regulations
Date this document prepared	December 21, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Board for Waste Management Facility Operators adopted, as final, amendments to its regulations that will eliminate unnecessary sections, clarify existing sections, consolidate duplicative sections, and simplify eligibility requirements. These amendments are in response to changes in the industry and by a general review conducted by the Board.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

There are no acronyms, abbreviations, or definitions in the Agency Background Document that are not defined in the referenced section or the “Definitions” section of the regulations.

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

At its meeting of December 3, 2015, the Board for Waste Management Facility Operators adopted, as final, these regulations titled “General Review of the Board for Waste Management Facility Operators Regulations.”

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

§ 54.1-2211 A of the Code of Virginia states that, “The Board shall promulgate regulations and standards for the training and licensing of waste management facility operators.”

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

In the course of performing a general review of the regulations, the Board found several sections that were unnecessary, confusing, or overly burdensome. Additionally, the formatting of some of the sections was inconsistent, often making it difficult to find initial license eligibility criteria information, education requirements for renewal of existing licenses, and identification of conduct elements that, if not followed, could result in disciplinary action. It is imperative that a regulatory board effectively communicate its requirements and expectations in a manner that are consistent, easy to understand, and formatted so that they can be easily located. Making the regulations clear, concise, less burdensome, and easy to follow, results in a more informed base of licensed individuals, which directly affects the health, safety, and welfare of citizens.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

Section 18 VAC 155-20-10 is amended to clarify definitions, remove unnecessary language, and add language to definitions to read more clearly.

Section 18 VAC 155-20-20 proposed amendments to repeal this section because the requirement is addressed within the statute.

Section 18 VAC 155-20-30 proposed amendments to repeal this section to relocate the language to Section 18 VAC 155-20-120.

Section 18 VAC 155-20-40 proposed amendments to remove the fee for training course approvals.

Section 18 VAC 155-20-100 proposed amendments to repeal this section. Further, the requirement is addressed within the statute.

Section 18 VAC 155-20-120 proposed amendments to remove Subsections A, B(2), B(3), B(4), B(6), B(7), B(8), B(9), C, D, E and F to consolidate the section and make the language clearer.

Section 18 VAC 155-20-130 proposed amendments to remove Subsection B because it is unnecessary.

Section 18 VAC 155-20-140 proposed amendments to repeal Subsection A(2), A(3), A(4), A(5), B(2) and B(3). Further, language is amended to read more clearly for easier understanding of examination requirements.

Section 18 VAC 155-20-150 proposed amendments to repeal this section to allow the Board more flexibility when approving these agreements.

Section 18 VAC 155-20-160 proposed amendments to repeal Subsection E.

Section 18 VAC 155-20-175 proposed to amend language to repeal section to relocate language to Section 18 VAC 155-20-220.

Section 18 VAC 155-20-220 proposed to amend language to read more clearly for easier understanding of training requirements.

Section 18 VAC 155-20-230 proposed to amend language to read more clearly.

Section 18 VAC 155-20-235 proposed to add new section for guidelines on education providers.

Section 18 VAC 155-20-280 proposed to amend language within Subsection B to read more clearly.

Section 18 VAC 155-20-285 proposed to add new section for prohibited acts to be more clearly understood.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

- 1) The proposed amendments are implemented as a result of a line-by-line review of the current regulations, identifying those that are overly burdensome, unnecessary, and overly burdensome. Additionally, the existing format of the regulations is confusing, often resulting in difficulties for licensees and the public to locate provisions that are necessary for public protection.
- 2) In amending the regulations, the Board for Waste Management Facility Operators is continuing to provide necessary public protection tasked to them through existing statutes.
- 3) There are no other pertinent matters of interest to the regulated community, government officials, and the public.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements in these proposed amendments to the regulations that are more restrictive than any federal statutes or regulations.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Only localities that have a municipal waste management facility will be affected as a result of these amendments. Since, however, the proposed changes result in regulations that are easier to understand and are less burdensome, the net affect will be positive.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These amendments will have no impact on the institution of the family or family stability.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
18 VAC 155-20-10	Definition of "Board approved training course"	Definition deleted	The phrase is self-explanatory and does not appear in the regulations as written in the definitions. The final regulations refer to a training course approved by the board, but not a board approved training course.
18 VAC 50-20-10	Definition of "In charge"	Definition deleted	The Board determined that the definition is unnecessary and is self-explanatory.
18 VAC 155-20-10	Definition of "Municipal solid waste"	Correction of regulatory reference	The regulations cited in proposed regulations had been changed due to amendments to the Waste Management Board. The citation is now correct.
18 VAC 155-20-10	Definition of "Operation"	Correction of regulatory reference	The regulations cited in proposed regulations had been changed due to amendments to the Waste Management Board. The citation is now correct.

18 VAC 155-20-10	Definition of "Organized program"	Regulatory reference added.	The applicable section of the Waste Management Regulations was added to clarify the definition.
18 VAC 155-20-10	Definition of "Project"	Definition deleted	The Board determined that the definition is obsolete, unnecessary, and that the standard dictionary definition would be adequate for the one time it appears in the regulations
18 VAC 155-20-10	Definition of "Site"	Definition deleted	The Board determined that the definition is not necessary as it does not appear in the context of waste management facility operation in the final regulations.
18 VAC 155-20-10	Definition of "Solid Waste"	Regulatory reference added	The applicable section of the Waste Management Regulations was added to clarify the definition.
18 VAC 155-20-10	Definition of "Storage"	Definition deleted	This definition was removed as it does not appear in the regulations and, in the course of board business, the standard dictionary definition would be sufficient.
18 VAC 155-20-10	Definition of "Substantial change"	Definition deleted	This definition was removed as it does not appear in the regulations. Additionally, in the course of board business, the unique facts in a particular case decision or course approval would determine whether or not the change was substantial.
18 VAC 155-20-110	License classification identification	Regulatory reference added	The citation of the applicable regulation was added to paragraphs A 1, A 2, A 3 and A 4. Additionally, in A 4 the term 'combustor' was changed to "combustion

			unit” in order to match standardized language used in the industry.
18 VAC 155-20-140	Examination requirements	Changed the term “education” to “training.”	This change was made to clarify the regulation and provide standardization of language in the regulations.
18 VAC 155-20-160	Continuing education required upon first renewal	Removed the requirement that continuing education be completed prior to the first renewal.	The board determined that an individual that had completed all training and examinations would not benefit from continuing education during the first two year license term and that it would be overly burdensome to the licensee.
18 VAC 155-20-220	Requirements for continuing education providers.	Added language that courses shall be approved by the board and that they may be reviewed by the board. The addition of a paragraph resulted in a modification to the sectioning format of the regulation and the terms pre-license education course and continuing education course were added.	This language was added clarify a regulation that the board determined may be confusing to education providers. Additionally, it added specific language that a course may be reviewed by the board.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

There were no comments received during the public comment period following the publication of the proposed stage.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
18 VAC 155-20-10			<p>Deletes the definitions for “Board,” “Person,” “Waste management facility,” and “Waste management facility operator,” as these terms are already defined in § 54.1-2209 of the Code of Virginia.</p> <p>Deletes the definition of “Closed facility” and “Closure” which are terms defined in 9 VAC 20-18-10 of the Board for Waste Management Facility Solid Waste Management Regulations and are not relevant to these regulations.</p> <p>Deletes the definition of “Continuing professional education/training” as it is unnecessary.</p> <p>Deletes the definitions of: “Board approved training course,” “in charge,” “municipal solid waste,” “operation,” “organized program,” “project,” “site,” “solid waste,” “storage,” and “substantial changes.”</p>
18 VAC 155-20-20			<p>Repeals this section of the regulations as the necessity for licensure is already made in § 54.1-2212 of the Code of Virginia.</p>
18 VAC 155-20-30			<p>Repeals this section and moves the application disclosure requirements to 18 VAC 155-20-120.</p>
18 VAC 155-20-40			<p>Removes the application fee for training courses. There has not been a new training course application received by the Board in nearly a decade. Often, small providers, which could include local governments, have wanted to hold courses just for their own employees or other individuals in their locality. These courses would require the submission of the application fee, which may deter them from holding the class, especially if the original intent was to offer the course free of charge.</p>
18 VAC 155-20-100			<p>Repeals this section as the necessity for licensure is already made in § 54.1-2212 and this particular reference to 1995 is now obsolete and unnecessary.</p>

<p>18 VAC 155-20- 120</p>			<p>This section was amended to simplify the requirements and provide the Board with flexibility in determining the qualifications for licensure. The current regulations provide several different ways of meeting the eligibility criteria, including the identification of alternatives to the basic requirements. These can be confusing and may be difficult to complete. For example currently an individual who does not have a high school diploma, college degree or GED may meet the education requirements by having seven years of experience with at least three years in one of eight different categories. Additionally, current regulations provide a different section for each of the class of licenses that are basically identical, for example, the Class III has its own section which states that the applicant must complete a training course approved for Class III, the Class IV, in its own section, states that the applicant must complete a training course approved for a Class IV. This repetitive language is not necessary as a single section with broader language that covers all classes.</p> <p>The section also requires that individual licenses report criminal convictions, per the requirements of § 54.1-204, and any other information regarding past disciplinary action.</p>
<p>18 VAC 155-20- 130</p>			<p>Removes language that is not necessary regarding the requirement that an individual wanting to add another classification to their license must apply and meet the requirements of an eligibility section. A separate application will be available for any individual wishing to add another classification to an existing license.</p>
<p>18 VAC 155-20- 140</p>			<p>Paragraph A of this section was condensed and clarified to indicate that all requirements must be met prior to the application for examination being approved.</p> <p>Paragraph B of this section eliminated the requirement that an individual complete the full training course again if they have failed the examination twice, and added language regarding the conduct of the applicant at the examination site.</p>
<p>18 VAC</p>			<p>This section of the regulations is repealed</p>

<p>155-120-150</p>			<p>as agreements of reciprocity or licensing agreements with other regulatory boards have detailed provisions outlining the provisions of the agreement and may vary widely from one agreement to another. Part of the determination of whether or not to enter into an agreement is for the board to determine if the requirements of the other licensing authority are equivalent enough to ensure that individuals coming into Virginia meet the minimum qualifications for licensure. Since this is done as a part of the development of the agreement, it is unnecessary for the applicant to take the basic training course within one year of the granting of the license.</p>
<p>18 VAC 155-20-160</p>			<p>This section of the regulations was restructured and simplified to make it easier to understand. Amended language used in this section is consistent with language used by other regulatory boards housed at the Department of Professional and Occupational Regulation.</p>
<p>18 VAC 155-20-175</p>			<p>This section is repealed as the requirement for continuing education have been moved to the previous section (18 VAC 155-20-160) and information requirements regarding the course and course provider have been moved to (18 VAC 155-20-220).</p>
<p>18 VAC 155-20-220</p>			<p>This section has been amended in order to clarify and simplify the training requirements listed in Part IV of the regulations.</p> <p>The proposed amendments expand training and continuing education courses to include accredited colleges, universities, junior and community colleges, DOLI approved apprenticeship programs and other schools approved by DOE, in addition to those that are approved by the Board.</p> <p>The proposed amendments also simplify the content requirement of basic training and continuing education programs that must be met in order to be approved by the Board. The current regulations listed several dozen different subjects that were required to be covered in the courses. Locking education providers into a list of subject matter that must be covered for a particular type of license can be a distinct disadvantage in ensuring that applicants</p>

			<p>are exposed to the minimum amount of knowledge necessary to ensure adequate competency to hold a license or to ensure that a licensed individual is given sufficient current information to maintain ongoing competency. Changes in the industry occur at a much faster rate than can be matched by amending the regulatory education requirements. By allowing the expertise of the board to determine, on an individual basis, that a provider and/or course meet the requirements to ensure a competent base of licensees, which provides sufficient public protection, is prudent.</p> <p>The proposed amendments to this section also make the application process for providers consistent, regardless of the type of program they are offering. This simplification will allow for a much more efficient method of reviewing applications for courses and providers.</p>
18 VAC 155-20-230			<p>This section is amended to remove information that has been consolidated and moved to section 18 VAC 155-20-220, but to leave the section that requires training providers to maintain records for a period of ten years.</p>
	18 VAC 50-20-235		<p>This proposed new section of the regulations provides a mechanism for the Board to deny an application for approval or to withdraw the current approval of a course/provider and provides a list of the grounds for that denial/withdrawal.</p>
18 VAC 155-20-280			<p>This proposed amendment segregates the authority of the board to deny an application, renewal, or to discipline a licensee from the actual prohibited acts, which have been moved to a new section (18 VAC 50-20-285).</p>
	18 VAC 155-20-285		<p>This proposed new section is a list of those acts which are prohibited and may result in disciplinary action or the denial of an application for licensure or renewal of a current license.</p>